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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/987,196

Applicant(s)

ERDMAN, CAROL L.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. The requirement for election of species is withdrawn. All claims will be examined.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the trademarks TRITON GR-5M, TRITON X-200, TRITON X-100, AND SILASTOL PST has been noted in claim 52. The use of a trademark or trade name to identify or describe a particular material or product does not comply with the requirements of the 35 U.S.C. 112, second paragraph. *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. In fact, the value of a trademark would be lost to the extent that it became descriptive of a product, rather than used as an identification of a source or origin of a product. Thus, the use of a trademark or trade name in a claim to identify or describe a material or product would not only render a claim indefinite, but would also constitute an improper use of the trademark or trade name. MPEP 2173.05(u).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-12, 14-17, 19-22, 24-27, 29-44, 46-49, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe USPN 5998695.

As to claims 1-3, 9-12, 14-17, 19, 21, 22, 24-27, 29, 31-35, 41-44, 46-49, Roe discloses an absorbent article comprising **20**: a front and rear waist portion cooperating to form a waist opening (Figure 2); a crotch region formed between the front waist and rear waist portions (Figure 2); a selectively-permeable topsheet **24**. The topsheet is selectively permeable as Roe discloses the topsheet may comprise hydrophobic fibers (col. 6, lines 1-14) and treated to be hydrophilic on an upper (outer) surface. Therefore, the lower (inner surface) is hydrophobic (col. 6, lines 1-14). The article further includes a substantially impermeable backsheet **26**, and an absorbent core **28** disposed between the selectively-permeable topsheet and substantially impermeable backsheet. The topsheet of Roe comprises at least one treated hydrophilic zone – upper surface and at least one non-treated hydrophobic zone – lower surface (col. 6, lines 1-14).

The treated hydrophilic zone of Roe comprises a surfactant (col. 6, lines 1-14) and a skin-wellness substance (col. 6, lines 32-53).

Roe discloses the treated hydrophilic zone is defined by an area that corresponds to a predetermined insult point that includes the central region and a male

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and female insult point in that the entire upper surface of the topsheet comprises the predetermined insult point.

As to claims 4 and 36, the skin-wellness substance is a substance effective or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof (col. 6, lines 32-53).

As to claims 5, 8, 20, 37, 40, and 51 Roe discloses the skin-wellness substance is selected from the claimed group of materials (col. 14, lines 15-47).

As to claims 6, 7, 38, and 39, Roe incorporates by reference suitable skin-wellness substances include Aloe and Vitamin E (col. 14, lines 43-47 refers to Roe USPN 5609587, which lists Aloe and Vitamin E as components of a skin-wellness substance col. 23, lines 28-44).

As to claim 30, the garment of Roe further comprises first and second leg gathers Figure 2.

6. Claims 51 and 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Paul et al. USPN 6217890.

As to claim 51, Paul discloses a composition in an absorbent article for providing leak protection and improved skin wellness comprising (Abstract and col. 10, lines 56-59): an amount of surfactant sufficient for rendering substantially hydrophilic an inherently hydrophobic material comprising nonwoven fibers or films (col. 13, lines 22-54); and a skin wellness substance selected from the claimed materials (col. 13 line 55 through col. 14, line 20).

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As to claim 52, see col. 36, lines 39-48.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 13, 18, 23, 28, 45, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe.

Claims 13, 18, 23, 28, 45, and 50 recite length and width dimensions for the treated hydrophilic zone. It is obvious Roe has transverse and longitudinal dimensions of the topsheet (Figure 2) however Roe does not specifically disclose the dimensions. It is old and well known in the art to provide an insult area of a topsheet with an oval configuration. It would have been an obvious matter of design choice to provide the topsheet and insult zones of Roe with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. A change

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in size is generally recognized as being within the level of ordinary skill in the art. *In re* Rose, 105 USPQ 237 (CCPA 1955).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761



May 19, 2003



WEILUN LO
SUPERVISORY PATENT EXAMINER
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